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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **INTUITIVE SURGICAL**
15 **OPERATIONS, INC.,**

16 Plaintiff,

17 vs.

18 **JONATHAN LAM,**

19 Defendant.

Case No. 3:24-cv-7427

Case Assigned to:
Hon. James Donato

ANSWER TO COMPLAINT

ANSWER

Defendant Jon Lam hereby answers the Complaint of Intuitive Surgical Operations, Inc., and admits, denies, and alleges as follows:

1. To the extent paragraph 1 contains a legal conclusion or legal conclusions, Defendant need not respond. To the extent a response is required, Defendant denies the allegations in paragraph 1.

2. To the extent paragraph 2 contains a legal conclusion or legal conclusions, Defendant need not respond. To the extent a response is required, Defendant lacks knowledge of the facts alleged in paragraph 2 and on that basis denies.

3. To the extent paragraph 3 contains a legal conclusion or legal conclusions, Defendant need not respond. To the extent a response is required, Defendant lacks knowledge of the facts alleged in paragraph 3 and on that basis denies.

4. To the extent paragraph 4 contains a legal conclusion or legal conclusions, Defendant need not respond. To the extent a response is required, Defendant admits that he worked for Intuitive in the company's supply chain logistics and compliance organization. To the extent not admitted in this response Defendant denies the allegations in paragraph 4.

5. To the extent paragraph 5 contains a legal conclusion or legal conclusions, Defendant need not respond. To the extent a response is required, Defendant admits that he was informed on September 10, 2024, that he was being terminated and that he sent emails from his Intuitive email account to his personal account.

6. To the extent paragraph 6 contains a legal conclusion or legal conclusions, Defendant need not respond. To the extent a response is required, Defendant lacks knowledge of the facts alleged in paragraph 6 and on that basis denies.

7. To the extent paragraph 7 contains a legal conclusion or legal conclusions, Defendant need not respond. Defendant admits that Intuitive cut off his access to the company's systems. Other than as admitted, Defendant denies the allegations in paragraph 7.

8. Defendant admits the allegations of paragraph 8.

9. To the extent paragraph 9 contains a legal conclusion or legal conclusions, Defendant need not respond. To the extent a response is required, Defendant lacks knowledge of the facts alleged in paragraph 9 and on that basis denies.

10. Paragraph 10 contains a legal conclusion or legal conclusions so Defendant need not respond.

11. Paragraph 11 contains a legal conclusion or legal conclusions so Defendant need not respond.

12. Defendant admits the allegations of Paragraph 12.

13. Defendant admits the allegations of Paragraph 13.

14. Paragraph 14 contains a legal conclusion or legal conclusions so Defendant need not respond.

15. To the extent paragraph 15 contains a legal conclusion or legal conclusions, Defendant need not respond. To the extent a response is required, Defendant lacks knowledge of the facts alleged in paragraph 15 and on that basis denies.

1 16. To the extent paragraph 16 contains a legal conclusion or legal conclusions,
2 Defendant need not respond. To the extent a response is required, Defendant lacks
3 knowledge of the facts alleged in paragraph 16 and on that basis denies.
4

5 17. To the extent paragraph 17 contains a legal conclusion or legal conclusions,
6 Defendant need not respond. To the extent a response is required, Defendant lacks
7 knowledge of the facts alleged in paragraph 17 and on that basis denies.
8

9 18. To the extent paragraph 18 contains a legal conclusion or legal conclusions,
10 Defendant need not respond. To the extent a response is required, Defendant lacks
11 knowledge of the facts alleged in paragraph 18 and on that basis denies.
12

13 19. To the extent paragraph 19 contains a legal conclusion or legal conclusions,
14 Defendant need not respond. To the extent a response is required, Defendant lacks
15 knowledge of the facts alleged in paragraph 19 and on that basis denies.
16

17 20. To the extent paragraph 20 contains a legal conclusion or legal conclusions,
18 Defendant need not respond. To the extent a response is required, Defendant lacks
19 knowledge of the facts alleged in paragraph 20 and on that basis denies.
20

21 21. To the extent paragraph 21 contains a legal conclusion or legal conclusions,
22 Defendant need not respond. To the extent a response is required, Defendant lacks
23 knowledge of the facts alleged in paragraph 21 and on that basis denies.
24

25 22. To the extent paragraph 22 contains a legal conclusion or legal conclusions,
26 Defendant need not respond. To the extent a response is required, Defendant lacks
27 knowledge of the facts alleged in paragraph 22 and on that basis denies.
28

23. To the extent paragraph 23 contains a legal conclusion or legal conclusions, Defendant need not respond. To the extent a response is required, Defendant lacks knowledge of the facts alleged in paragraph 23 and on that basis denies.

24. To the extent paragraph 24 contains a legal conclusion or legal conclusions, Defendant need not respond. To the extent a response is required, Defendant lacks knowledge of the facts alleged in paragraph 24 and on that basis denies.

25. Defendant admits the allegations in paragraph 25.

26. To the extent paragraph 26 contains a legal conclusion or legal conclusions, Defendant need not respond. Defendant admits that the agreement contains the quoted language.

27. To the extent paragraph 27 contains a legal conclusion or legal conclusions, Defendant need not respond. Defendant admits that the agreement contains the quoted language.

28. To the extent paragraph 28 contains a legal conclusion or legal conclusions, Defendant need not respond. Defendant admits that the agreement contains the quoted language.

29. To the extent paragraph 29 contains a legal conclusion or legal conclusions, Defendant need not respond. Defendant admits that the agreement contains the quoted language.

30. To the extent paragraph 30 contains a legal conclusion or legal conclusions, Defendant need not respond. To the extent a response is required, Defendant lacks knowledge of the facts alleged in paragraph 30 and on that basis denies.

1 31. To the extent paragraph 31 contains a legal conclusion or legal conclusions,
2 Defendant need not respond. To the extent a response is required, Defendant lacks
3 knowledge of the facts alleged in paragraph 31 and on that basis denies.
4

5 32. To the extent paragraph 32 contains a legal conclusion or legal conclusions,
6 Defendant need not respond. Defendant admits that he had access to various Intuitive
7 materials but does not admit that the materials constitute trade secrets or confidential
8 materials.
9

10 [Unnumbered Paragraph] Defendant admits that he was told that he was being
11 terminated on September 10, 2024 and that he was provided with a Notice of
12 Separation. Defendant admits that the Notice of Separation contains the quoted
13 language.
14

15 33. Defendant admits that the Notice of Separation contains the quoted
16 language.
17

18 34. To the extent paragraph 34 contains a legal conclusion or legal conclusions,
19 Defendant need not respond. To the extent that a response is required, Defendant denies
20 the facts alleged in paragraph 34.
21

22 35. To the extent paragraph 35 contains a legal conclusion or legal conclusions,
23 Defendant need not respond. To the extent that a response is required, Defendant admits
24 he sent data from his Intuitive email to his personal Gmail account.
25

26 36. To the extent paragraph 36 contains a legal conclusion or legal conclusions,
27 Defendant need not respond. To the extent a response is required, Defendant lacks
28 knowledge of the facts alleged in paragraph 36 and on that basis denies.

1 37. To the extent paragraph 37 contains a legal conclusion or legal conclusions,
2 Defendant need not respond. To the extent a response is required, Defendant lacks
3 knowledge of the facts alleged in paragraph 37 and on that basis denies.
4

5 38. To the extent paragraph 38 contains a legal conclusion or legal conclusions,
6 Defendant need not respond. To the extent that a response is required, Defendant denies
7 the facts alleged in paragraph 38.
8

9 39. To the extent paragraph 39 contains a legal conclusion or legal conclusions,
10 Defendant need not respond. To the extent a response is required, Defendant admits that
11 Intuitive's Lawyers threatened him on October 9.
12

13 40. To the extent paragraph 40 contains a legal conclusion or legal conclusions,
14 Defendant need not respond. To the extent that a response is required, Defendant admits
15 that he told Intuitive's lawyers that he wished to respond through counsel. Defendant
16 further admits that he told Intuitive that he would not share any information except with
17 counsel. Except as expressly admitted, Defendant denies the facts alleged in paragraph 40,
18 including because he lacks knowledge of the facts alleged in paragraph 40.
19

20 41. To the extent paragraph 41 contains a legal conclusion or legal conclusions,
21 Defendant need not respond. To the extent a response is required, Defendant denies the
22 allegations in paragraph 41.
23

24 42. To the extent paragraph 42 contains a legal conclusion or legal conclusions,
25 Defendant need not respond. To the extent a response is required, Defendant denies the
26 allegations in paragraph 42.
27

28 43. Defendant incorporates his response to the prior paragraphs.

1 44. To the extent paragraph 44 contains a legal conclusion or legal conclusions,
2 Defendant need not respond. To the extent that a response is required, Defendant denies
3 the facts alleged in paragraph 44, including because he lacks knowledge of the facts alleged
4 in paragraph 44.
5

6 45. To the extent paragraph 45 contains a legal conclusion or legal conclusions,
7 Defendant need not respond. To the extent that a response is required, Defendant denies
8 the facts alleged in paragraph 45, including because he lacks knowledge of the facts alleged
9 in paragraph 45.
10

11 46. To the extent paragraph 46 contains a legal conclusion or legal conclusions,
12 Defendant need not respond. To the extent that a response is required, Defendant denies
13 the facts alleged in paragraph 46, including because he lacks knowledge of the facts alleged
14 in paragraph 46.
15

16 47. To the extent paragraph 47 contains a legal conclusion or legal conclusions,
17 Defendant need not respond. To the extent that a response is required, Defendant denies
18 the facts alleged in paragraph 47, including because he lacks knowledge of the facts alleged
19 in paragraph 47.
20

21 48. To the extent paragraph 48 contains a legal conclusion or legal conclusions,
22 Defendant need not respond. To the extent that a response is required, Defendant denies
23 the facts alleged in paragraph 48, including because he lacks knowledge of the facts alleged
24 in paragraph 48.
25

26 49. To the extent paragraph 49 contains a legal conclusion or legal conclusions,
27 Defendant need not respond. To the extent that a response is required, Defendant denies
28

1 the facts alleged in paragraph 49, including because he lacks knowledge of the facts alleged
2 in paragraph 49.

3
4 50. To the extent paragraph 50 contains a legal conclusion or legal conclusions,
5 Defendant need not respond. To the extent that a response is required, Defendant denies
6 the facts alleged in paragraph 50, including because he lacks knowledge of the facts alleged
7 in paragraph 50.

8
9 51. To the extent paragraph 51 contains a legal conclusion or legal conclusions,
10 Defendant need not respond. To the extent that a response is required, Defendant denies
11 the facts alleged in paragraph 51, including because he lacks knowledge of the facts alleged
12 in paragraph 51.

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14 52. Defendant incorporates his responses to the prior paragraphs.

15
16 53. Paragraph 50 contains a legal conclusion or legal conclusions, Defendant
17 need not respond

18
19 54. To the extent paragraph 54 contains a legal conclusion or legal conclusions,
20 Defendant need not respond. To the extent that a response is required, Defendant denies
21 the facts alleged in paragraph 54, including because he lacks knowledge of the facts alleged
22 in paragraph 54.

23
24 55. To the extent paragraph 55 contains a legal conclusion or legal conclusions,
25 Defendant need not respond. To the extent that a response is required, Defendant denies
26 the facts alleged in paragraph 55, including because he lacks knowledge of the facts alleged
27 in paragraph 55.
28

1 56. To the extent paragraph 56 contains a legal conclusion or legal conclusions,
2 Defendant need not respond. To the extent that a response is required, Defendant denies
3 the facts alleged in paragraph 56, including because he lacks knowledge of the facts alleged
4 in paragraph 56.
5

6 57. To the extent paragraph 57 contains a legal conclusion or legal conclusions,
7 Defendant need not respond. To the extent that a response is required, Defendant denies
8 the facts alleged in paragraph 57, including because he lacks knowledge of the facts alleged
9 in paragraph 57.
10

11 58. To the extent paragraph 58 contains a legal conclusion or legal conclusions,
12 Defendant need not respond. To the extent that a response is required, Defendant denies
13 the facts alleged in paragraph 58, including because he lacks knowledge of the facts alleged
14 in paragraph 58.
15

16 59. Defendant incorporates his responses to the prior paragraphs.
17

18 60. Paragraph 60 contains a legal conclusion or legal conclusions, Defendant
19 need not respond
20

21 61. To the extent paragraph 61 contains a legal conclusion or legal conclusions,
22 Defendant need not respond. To the extent that a response is required, Defendant denies
23 the facts alleged in paragraph 61, including because he lacks knowledge of the facts alleged
24 in paragraph 61.
25

26 62. To the extent paragraph 62 contains a legal conclusion or legal conclusions,
27 Defendant need not respond. To the extent that a response is required, Defendant denies
28

1 the facts alleged in paragraph 62, including because he lacks knowledge of the facts alleged
2 in paragraph 62.

3
4 63. To the extent paragraph 63 contains a legal conclusion or legal conclusions,
5 Defendant need not respond. To the extent that a response is required, Defendant denies
6 the facts alleged in paragraph 63, including because he lacks knowledge of the facts alleged
7 in paragraph 63.

8
9 64. To the extent paragraph 64 contains a legal conclusion or legal conclusions,
10 Defendant need not respond. To the extent that a response is required, Defendant denies
11 the facts alleged in paragraph 64, including because he lacks knowledge of the facts alleged
12 in paragraph 64.

13
14 65. To the extent paragraph 65 contains a legal conclusion or legal conclusions,
15 Defendant need not respond. To the extent that a response is required, Defendant denies
16 the facts alleged in paragraph 65, including because he lacks knowledge of the facts alleged
17 in paragraph 65.

18
19 **Response to Prayer for Relief**

20 Defendant denies that Plaintiff is entitled to relief on any of its purported causes of
21 action as set forth in the Complaint.

22 **Affirmative Defenses**

23 Defendant Lam alleges the following affirmative defenses:

24 **FIRST AFFIRMATIVE DEFENSE**

25 **(Against All Causes of Action)**

26 Defendant alleges that the Complaint and each cause of Action therein fails to state
27 facts sufficient to constitute a cause of action or set forth a claim upon which relief may be
28 granted against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Against All Causes of Action)

Defendant alleges that the Cross Complaint is barred by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

(Against All Causes of Action)

Defendant alleges that the Cross Complaint is barred by the doctrine of waiver.

FOURTH AFFIRMATIVE DEFENSE

(Against All Causes of Action)

Defendant alleges that the Cross Complaint is barred by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

(Against All Causes of Action)

Defendant alleges that the Cross Complaint is barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(All Defendants Against All Causes of Action)

Defendant alleges that the Cross Complaint and each cause of action set forth therein is barred by the doctrine of consent.

SEVENTH AFFIRMATIVE DEFENSE

(Against All Causes of Action)

Defendant alleges that Defendant and Cross-Complainant's claims for damages are barred by the doctrine of avoidable consequences.

EIGHTH AFFIRMATIVE DEFENSE

(Against All Causes of Action)

Defendant alleges that the Cross Complaint fails to state facts sufficient to state a claim for punitive and/or exemplary damages.

NINTH AFFIRMATIVE DEFENSE

(Against All Causes of Action)

1 Defendant alleges that Plaintiff failed to exercise reasonable and ordinary care,
2 caution or prudence and that the alleged injuries and damages, if any, were proximately
3 caused and/or contributed to by Plaintiff's own negligence and/or intentional conduct and
4 therefore, any recovery to which Plaintiff might otherwise be entitled must be reduced by
5 reason of Plaintiff's contributory or comparative negligence and/or intentional conduct.

6 **TENTH AFFIRMATIVE DEFENSE**

7 **(Against All Causes of Action)**

8 Defendant alleges that Plaintiff failed to take reasonable affirmative action to mitigate
9 its damages as they are alleged in the Complaint and, therefore, are barred from any recovery
10 against Defendant to the extent Plaintiff has failed to mitigate its damages.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 **(Against All Causes of Action)**

13 Defendant alleges that Plaintiff is not entitled to recover punitive or exemplary
14 damages on the grounds that any award of punitive or exemplary damages under California
15 law in general, and/or as applied to the facts of this specific action, violates Defendant's
16 constitutional rights under provisions of the United States and California Constitutions,
17 including but not limited to the equal protection and due process clauses of the Fifth and
18 Fourteenth Amendments of the United States Constitution, the excessive fines and cruel
19 and unusual punishment clauses of the Eighth Amendment of the United States
20 Constitution, and Article I, Sections 7 and 17 and Article IV, Section 16 of the California
21 Constitution.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **(Against All Causes of Action)**

24 Plaintiff is precluded from recovering the damages alleged in the Complaint because
25 those damages and/or penalties are vague, ambiguous, unreasonable, uncertain, and/or
26 speculative in nature.

27 **THIRTEENTH AFFIRMATIVE DEFENSE**

28 **(Against All Causes of Action)**

1 Plaintiff lacks standing to assert its causes of action and/or seek the form of recovery
2 sought in the Cross Complaint because Plaintiff has not suffered any injury-in-fact.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 **(Against All Causes of Action)**

5 Defendant alleges that some or all of Plaintiff's claims are barred by the doctrine of
6 Equitable Estoppel.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 **(Against All Causes of Action)**

9 Defendant alleges that with respect to the Complaint and each cause of action alleged
10 therein, any damages incurred by Plaintiff were directly and proximately caused and
11 contributed to by the acts, conduct and/or omissions of third parties and/or entities.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 **(Against All Causes of Action)**

14 Defendant alleges that some or all of Plaintiff's claims are barred by the litigation
15 privilege embodied in California Civil Code Section 47(b).

16 **SEVENTEENTH AFFIRMATIVE DEFENSE**

17 **(Against All Causes of Action)**

18 Defendant alleges that some or all of Plaintiff's trademark claims are barred by the
19 doctrine of fair use.

20 **EIGHTEENTH AFFIRMATIVE DEFENSE**

21 **(Against All Causes of Action)**

22 Defendant alleges that some or all of Plaintiff's claims for damages are barred because
23 any information that he retained was related to her whistleblowing activity.

24 **RESERVATION OF ADDITIONAL DEFENSES**

25 Defendant alleges that because Plaintiff's Complaint is couched in conclusory terms,
26 all affirmative defenses that may be applicable cannot be fully anticipated at this time.
27 Accordingly, the right to assert additional affirmative defenses, if and to the extent that such
28 affirmative defenses are applicable, is reserved. Additionally, Defendant reserves the right

1 to amend this Answer should Defendant later discover facts demonstrating the existence of
2 new and/or additional affirmative defenses, and/or should a change in the law support the
3 inclusion of new and/or additional affirmative defenses.

4 **DEMAND FOR JURY TRIAL**

5 Pursuant to Federal Rule of Civil Procedure 38(b), Defendant hereby demands a jury
6 trial on all issues triable as of right to a jury.

7
8
9 Dated: January 30, 2025

Respectfully submitted,

10 **KING & SIEGEL LLP**

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12
13 By: *Robert King*

14 ROBERT JOHNSTON KING
15 JULIAN BURNS KING
16 Attorneys for Defendant
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